

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
August 1, 2003

DISTRICT FUNDED FACILITIES
INCLUDED IN EXISTING SCHOOL BUILDING CAPACITY

BACKGROUND

After a one-time calculation of existing school building capacity, known as the 'baseline', is made, the Education Code provides that it shall be adjusted by the "...number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined..." (EC 17071.75 (b))

State Allocation Board regulation 1859.51 (i) implements this section of law by saying that the district's baseline eligibility shall be reduced "...by the number of pupils housed ... in any classroom provided after the baseline eligibility was determined...." An exception is made for classrooms where the contract for the lease, lease-purchase, purchase or construction was made no more than 180 days prior to the submission of an approvable application. In other words, under current law and regulation, a district must file an application for funding of a facility no later than 180 days after signing a contract for building or leasing a facility. If the district does not do so, the classrooms become a part of the district's existing school building capacity, thus reducing the district's eligibility for funding and precluding reimbursement of the costs for the project.

DISCUSSION

The direction in the law that regardless of the source of funding any classroom is counted in the district's school building capacity is clear. However, the law leaves it to the SAB to determine when a classroom is 'provided.' The current regulation essentially uses the date of the signing of a contract for the lease or construction as the milestone, but provides a 180 day grace period for the district to file an approvable application for funding. This option may not accommodate all circumstances:

- ❑ Design-build or lease / lease- back situations. In these cases, the initial design build or lease / lease-back agreement may precede the signing of a construction contract by a considerable time. It may not be possible to file an application for funding within 180 days because plan and site approvals may not be in place.
- ❑ A few districts, unaware of the requirement to file within 6 months, have inadvertently lost eligibility for reimbursement.
- ❑ Some districts have proceeded with construction without certain required approvals in place. For this reason, the districts are unable to file approvable applications and lose eligibility for reimbursement.

OPTIONS

There are several possibilities to determine when a classroom should be considered available and therefore included in the district's existing school building capacity. A few options are as follows:

1. 180 days after the contract for the lease, lease-purchase, purchase or construction is signed. (Current regulation)

As already discussed, this option does not easily accommodate design-build projects and does not address lease / lease-back projects constructed under EC 17406.

2. When the contract for the lease, lease-purchase, purchase or construction is signed.

Same problem as #1.

3. When a Notice of Completion for the classroom is recorded.

A NOC may not be filed promptly for a variety of reasons, including legal issues. Therefore it is not a good indicator of when a classroom is 'provided' to the district.

4. When the classroom is occupied.

This option has a number of problems of interpretation. However, it most closely identifies the point in time when the classroom is 'provided' and is in use by the district.

Any option selected must ensure that the State bond funds are used to provide needed classrooms not already existing or to reimburse the State's share of the cost of classrooms constructed in anticipation of State funding.

PROPOSAL

Basic Rule:

All classrooms for which a contract for the lease, lease/lease-back, lease-purchase, purchase or construction shall be included in the district's existing school building capacity as of the date of occupancy of any portion of the project. If a district wishes to seek funding under the School Facility Program (SFP) for that project, it must file a complete application for funding with the Office of Public School Construction prior to the date of occupancy of any portion of the project. After the date of occupancy, a district will be ineligible to seek reimbursement under the SFP for that project.

Grandfathering:

For projects not previously State funded, the district may request funding for the project (classrooms) under the following circumstances:

1. The complete application for funding must be filed with the Office of Public School Construction no later than 90 days after this proposed regulation is in effect; and,
2. The funding application meets all requirements of Chapter 12.5; and,
3. The contract for the lease, lease-purchase, purchase or construction has been signed on or after January 1, 2000; and,
4. The grants for the project funded as described in this grandfathering proposal shall be limited to actual eligible expenditures, not to exceed the amount of SFP funding calculated at the time the contract was originally signed; and,
5. The district has new construction eligibility for the project. If the capacity of the project is included in the district's baseline, the district may exclude the capacity from its existing school building capacity for purposes of determining eligibility for this project; and,
6. All project approvals required for a new construction funding application were obtained prior to the contract date; and,
7. If the application for funding meets all criteria except #6, the district may request a special case-by-case approval by the SAB. The district must show evidence that, at the time the contract was signed, it had been the district's intention to seek State funding for the project.

Previously in the first occasions of projects submitting an application outside of the "180 days", a small number of projects received a SFP approval by accepting a second reduction of pupils from its eligibility. Subject to the SAB approval of this proposal, staff recommends that an opportunity to correct the second reduction be provided to those districts if the district meets the grandfathering provisions above.

RECOMMENDATION

Present to the SAB proposed amended SFP Regulations as outlined above.